

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS**

CIVIL ACTION NO. 05-40045 FDS

CITIBANK, N.A. AS TRUSTEE,

Plaintiff,

v.

**JOHN P. PHELAN, WENDY M. PHELAN, DAVID
LA BRIE, THE UNITED STATES OF AMERICA,
O'CALLAGHAN CONSTRUCTION COMPANY
AND THE COMMONWEALTH OF
MASSACHUSETTS DEPARTMENT OF
REVENUE,**

Defendants.

MOTION FOR ENTRY OF DEFAULT JUDGMENT

Now comes the Plaintiff, Citibank, N.A., as trustee, pursuant to Rule 55 (b) of the Federal Rules of Civil Procedure, and hereby applies to the clerk for entry of default judgment against the Defendant, John P. Phelan and in favor of the Plaintiff, Citibank, N.A., as trustee, for the failure of said Defendant to plead or otherwise defend and entry of default having been entered by the Court on May 10, 2005.

**CITIBANK, N.A., AS TRUSTEE,
By its Attorneys,**

/s/ Raymond C. Pelote

Raymond C. Pelote, Esq.

BBO#: 655475

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May 20, 2005

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS**

CIVIL ACTION NO. 05-40045 FDS

CITIBANK, N.A. AS TRUSTEE,

Plaintiff,

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**JOHN P. PHELAN, WENDY M. PHELAN, DAVID
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O'CALLAGHAN CONSTRUCTION COMPANY
AND THE COMMONWEALTH OF
MASSACHUSETTS DEPARTMENT OF
REVENUE,**

Defendants.

AFFIDAVIT OF RAYMOND C. PELOTE

I, Raymond C. Pelote, do hereby depose and say under oath that:

1. I am counsel for the Plaintiff in the above captioned matter and have personal knowledge of the facts set forth in the Affidavit;
2. The Plaintiff herein filed a Complaint on or about January 27, 2005 and was issued a summons on or about February 4, 2005;
3. The Defendant, John P. Phelan was served with a copy of the complaint and summons by sheriff on March 25, 2005;
4. Proof of service was filed with the Court on or about March 30, 2005;
5. More than twenty (20) days have passed since service of the summons and complaint and no answer or other responsive pleading has been received within the time limit fixed by the Federal Rules of Civil Procedure Rule 12(a);

6. On May 10, 2005, the Court entered an order granting Plaintiff's Motion for entry of default.
7. To the best of the affiants knowledge, information and belief, the Defendant is not in the military as required by 50 U.S.C. app. 520 nor is the Defendant an infant or incompetent person; and
8. This affidavit is executed by affiant in accordance with Rule 55(b) of the Federal Rules of Civil Procedure for the purpose of enabling the Plaintiff to obtain an entry of default judgment against the Defendant, John P. Phelan for failure to plead or otherwise defend against Plaintiff's complaint.

CITIBANK, N.A., AS TRUSTEE,
By its Attorneys,

/s/ Raymond C. Pelote
Raymond C. Pelote
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May 20, 2005

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REVENUE,**

Defendants.

DEFAULT JUDGMENT

Now, upon application of Plaintiff and an affidavit demonstrating that Defendant, John P. Phelan, was properly served with process and has failed to file a timely answer, that the Defendant, John P. Phelan, is not an infant or incompetent person or in the military service of the United States, and default having entered, it is hereby:

ORDERED, ADJUDGED AND DECREED

That the Plaintiff's Motion for Entry of Default Judgment shall be granted; and Defendant, John P. Phelan, shall be barred from making any claim to the interpleaded surplus funds.

SO ORDERED:

ENTERED:

Saylor, D.J.

Clerk

CERTIFICATE OF SERVICE

I, Raymond C. Pelote, Esquire, of HARMON LAW OFFICES, P.C., P.O. Box 610389, Newton Highlands, MA 02461-0389 certify:

That on the 20th day of May, 2005, a copy of the Motion for Entry of Default Judgment, Affidavit of Raymond C. Pelote and Proposed Default Judgment were electronically served on the following parties:

Lydia Bottome Turanchik, Edwin H. Howard, Eileen Ryan McAuliffe, Peter M. Mirageas, Barbara Healy Smith, William M. Palmer

The parties not served electronically were served by regular mail on May 20, 2005, upon:

John P. Phelan
1 Catacunamaug Road
Shirley, MA 01464

David M. Rosen
Harmon Law Offices, P.C.
150 California Street
Newton, MA 02458

John J. Curley, III, Esq.
Law Offices of McEvilly & Curley
48 West Street, Suite 1
Leominster, MA 01453-5694

I certify under penalty of perjury that the foregoing is true and correct.

Executed on: May 20, 2005

/s/ Raymond C. Pelote _____
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